

**KENNEDY, JENNIK & MURRAY, P.C.**

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THOMAS M. MURRAY  
OF COUNSEL:  
LARRY MAGARIK

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RACHEL A. KIRTNER (OR)  
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BERNHARD W. ROHRBACHER (CA ONLY)  
OMAR A. JOSEPH (MA, D.C.)  
CHRISTOPHER G. GANT (NJ ONLY)

April 17, 2008

**Original Filed by ECF, Courtesy Copy by Mail**

Hon. Charles L. Brieant, United States District Judge  
United States District Court, Southern District of New York  
U.S. Courthouse, 300 Quarropas Street, Room 275  
White Plains, NY 10601

**Re: Chao v. Guild Concepts, Ltd.**  
**08-CIV-1716 (CLB)**  
**Report of Independent Fiduciary**

Dear Judge Brieant:

I am the Independent Fiduciary of the Guild Concepts, Ltd. Employee Savings Plan (the "Plan"). Enclosed please find the revised Notice to Plan participants which has been approved by Counsel for both parties per my letter dated April 3, 2008, along with materials evidencing Counsel's approval.

I recommend that the Court approve and authorize me to send a Notice to Participants in the form which is attached hereto. If this Recommendation meets with the Court's approval, we respectfully request that the Court "So Order" a copy of this Report.

**Service**

A copy of this Report with its attachments has been served by first class U.S. mail postage prepaid this 17<sup>th</sup> day of April, 2008 upon the attorneys for the parties listed below.

Respectfully,

*Larry Magarik*

LARRY MAGARIK (LM-3748)

**MEMO ENDORSED**

*Application Granted  
So Ordered!  
April 22, 2008  
Charles Brieant  
MSDS*

cc: Harold W. LeMar, Esq., Attorney for Plaintiff  
Office of the Regional Solicitor  
U.S. Department of Labor  
201 Varick Street, Room 983  
New York, NY 10014-4811

Fran Obeid, Esq., Attorney for Defendants  
Kostelanetz & Fink, LLP  
7 World Trade Center  
New York, NY 10007

**Revised Final Draft April 16, 2008**

Dear Guild Concepts Ltd. Employee or Former Employee:

You have been identified as an individual who may be a participant of the Guild Concepts, Ltd. Employee Savings Plan (the "Plan").

The Plan was established by Guild Concepts, Ltd. ("Guild") and the Plan Trustees, Victor Ayala and Philip Liu. On April 17, 2006 the United States Department of Labor Employee Benefits Security Administration ("DOL") issued a Voluntary Compliance Statement to Mr. Ayala. The DOL noted that Mr. Liu made unauthorized cash withdrawals from the Plan for approximately 10 months in 2003 and, in July 2005, pled guilty to embezzling approximately \$1.3 million from the Plan and was sentenced to 57 months in prison for each of two counts. The DOL noted that Mr. Ayala is liable for Mr. Liu's action under the Employee Retirement Income Security Act, 29 USC §1001, et seq. ("ERISA") by virtue of his status as a fiduciary of the Plan.

On August 31, 2007 the DOL entered into a Stipulation with Guild, Mr. Ayala and the Plan. The Stipulation provides, among other things, that Mr. Ayala would amend the Plan to appoint an Independent Fiduciary for the Plan to replace Mr. Ayala. The Independent Fiduciary will collect, marshal and administer the Plan's assets and evaluate all claims and pay assets to the Plan participants and creditors, and Mr. Ayala will resign after transferring all records and information regarding the Plan to the Independent Fiduciary. Guild and Mr. Ayala agreed to repay \$1.5 million to the Plan in accordance with a monthly schedule beginning September 15, 2007 and concluding August 15, 2012. If Guild is sold, the DOL will be notified and the remaining payments will be immediately paid out of the sale proceeds. Credit for any repayments by Mr. Liu to the Plan as a result of his criminal conviction will be given. Mr. Ayala will amend the Plan to permit the forfeiture and redistribution of Mr. Ayala's own account in the Plan. No distribution of any Plan account will be made to Mr. Liu without Court approval. The Independent Fiduciary's fees and expenses will be paid out of the Plan.

Finally, Guild and Mr. Ayala were required to give notice to all Plan participants of the Stipulation's terms and right to send comments to DOL. This letter is intended to provide such notice.

The DOL nominated and Guild and Mr. Ayala appointed me as the Independent Fiduciary of the Plan.

On December 5, 2007, I accepted appointment as the Plan's Independent Fiduciary. This letter will review some of the things I have accomplished.

I obtained a Fidelity Bond for the Plan as required by ERISA, and obtained Fiduciary Insurance for the Plan.

I located and marshaled the Plan's assets which were at American Funds, and reviewed the Plan's past investment performance and yield. I established a Plan checkbook.

I collected and deposited monthly payments from Guild and Mr. Ayala which are being made in accordance with their Stipulation with DOL.

I reviewed Plan documents and case materials and the Plan's account statements. I met with the DOL representatives to review Plan documents, materials and affairs.

I met with Marjorie P. Wish, Senior Consultant at CAI Benefits, Inc., and made arrangements for CAI Benefits, Inc. ("CAI") to serve as the Plan's Third Party Administrator and Consultant. CAI has been involved in the reconstruction of the Plan since the DOL's investigation was conducted and is familiar with the Plan. I arranged for CAI to prepare necessary Amendments to freeze the Plan and allow for the forfeiture of Mr. Ayala's and Mr. Liu's Plan accounts and the repayment of loans to the Plan. I monitored the Plan's filing of its Form 5500, which was prepared by CAI.

I wrote to Mr. Ayala to request the waiver of his Plan account, all Plan records and information and then his resignation, and a draft Report to the Plan participants, and am awaiting receipt of these materials from him.

I contacted the United States Attorney to facilitate the waiver of Mr. Liu's Plan account, and am waiting to hear from that office.

I interviewed professional ERISA Investment Managers and retained Stacey Braun Associates, Inc. as the Plan's Investment Manager to professionally manage the Plan's investments and assets in accordance with ERISA. Stacey Braun has executed an ERISA Investment Management Agreement with Investment Policy Statement and Guidelines, and has established a new custodial account at Smith Barney. A new Checkbook has been provided, and Stacey Braun has begun to manage the Plan's assets.

On February 21, 2008 the DOL filed suit against Guild, Mr. Ayala and the Plan in the United States District Court for the Southern District of New York. The suit was assigned to Judge Charles L. Brieant. As Independent Fiduciary, I will submit periodic reports to the Court.

I am sending you this Report to advise you of the terms of the Stipulation, and also the progress that I have made. You may send comments to the United States Department of Labor, EBSA, at 33 Whitehall Street, Suite 1200, New York, NY 10004.

Much work remains, but we are making progress. We will keep you apprised of developments, and thank you for your patience.

Sincerely,

LARRY MAGARIK

cc: Marjorie P. Wish  
Tamar Miller  
Harold LeMar, Esq.  
Victor Ayala  
Fran Obeid, Esq.

X-HAT-SENDERGROUP: CES\_OUTBOUND  
X-HAT-SENDER\_IP: 10.183.155.24  
X-IronPort-AV: E=Sophos;i="4.25,672,1199682000";  
d="scan'208,217";a="166708074"  
X-HAT-DCN-SENDERGROUP: CES\_OUTBOUND  
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Date: Thu, 17 Apr 2008 12:07:11 -0400  
X-MS-Has-Attach:  
X-MS-TNEF-Correlator:  
Thread-Topic: guild concepts, ltd. employee savings plan, chao v. guild concepts  
Thread-Index: Acif/13gBeqcVKSFSaye5ZHmwxt/4gApa+Jw  
From: "LeMar, Harold - SOL" <Lemar.Harold@DOL.GOV>  
To: "Larry Magarik" <lmagarik@kjmlabor.com>  
X-OriginalArrivalTime: 17 Apr 2008 16:07:12.0324 (UTC) FILETIME=[189FE840:01C8A0A5]  
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X-Antivirus: AVG for E-mail 7.5.523 [269.23.0/1383]

**This is fine**

---

**From:** Larry Magarik [mailto:lmagarik@kjmlabor.com]  
**Sent:** Wednesday, April 16, 2008 4:19 PM  
**To:** LeMar, Harold - SOL; fobeid@kflaw.com  
**Subject:** Fwd: guild concepts, ltd. employee savings plan, chao v. guild concepts

Dear Counsel:

Attached is the revised draft Report to Participants, including the additional change received by phone from Harol LeMar, removing the words "and a Consent Judgment was entered on March 7, 2008" from the paragraph beginning "On February 21, 2008..."

Please review the attached revised draft Report, and kindly reply with your approval so I can submit it to the Court.

Thank you both,

Larry Magarik, Esq.  
Kennedy Jennik & Murray, P.C.  
113 University Place  
New York, NY 10003  
(phone) 212-358-1500 ext. 230  
(cell) 917-363-0665  
(fax) 212-358-0207  
(email) lmagarik@kjmlabor.com

Date: Wed, 16 Apr 2008 11:47:34 -0400  
To: "LeMar, Harold - SOL" <Lemar.Harold@DOL.GOV>, fobeid@kflaw.com



From: Larry Magarik <lmagarik@kjmlabor.com>  
Subject: guild concepts, ltd. employee savings plan, chao v. guild concepts

Dear Counsel:

Attached is a revised draft Report to Participants for your perusal. I incorporated the changes proposed in Fran Obeid's April 15, 2008 letter (also attached). I also added "The DOL noted that" before the last sentence in the second paragraph, changed "is being" to "was" in the paragraph beginning "I met with...", and removed the sentence beginning "If you would like a copy..."

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(cell)917-363-0665  
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(email) lmagarik@kjmlabor.com

Subject: RE: guild concepts, ltd. employee savings plan, chao v. guild concepts  
Date: Thu, 17 Apr 2008 10:44:59 -0400  
X-MS-Has-Attach:  
X-MS-TNEF-Correlator:  
Thread-Topic: guild concepts, ltd. employee savings plan, chao v. guild concepts  
Thread-Index: Acif/1mK0dvtYnEcTZqzP1f+5b7QLAAmhyCw  
From: "Fran Obeid" <fobeid@kflaw.com>  
To: "Larry Magarik" <lmagarik@kjmlabor.com>,  
"LeMar, Harold - SOL" <Lemar.Harold@DOL.GOV>  
X-pstn-neptune: 0/0/0.00/0  
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X-Antivirus: AVG for E-mail 7.5.523 [269.23.0/1383]

I approve of the attached draft. § Thank you Larry and Harold. §

Fran Obeid  
Kostelanetz & Fink, LLP  
7 World Trade Center  
New York, New York 10007  
(212) 808-8100 (Phone) | (212) 808-8108 (Fax)  
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PLEASE NOTE NEW ADDRESS

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**From:** Larry Magarik [mailto:lmagarik@kjmlabor.com]  
**Sent:** Wednesday, April 16, 2008 4:19 PM  
**To:** LeMar, Harold - SOL; Fran Obeid  
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the Court.

Thank you both,

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Date: Wed, 16 Apr 2008 11:47:34 -0400  
To: "LeMar, Harold - SOL" <Lemar.Harold@DOL.GOV>, fobeid@kflaw.com  
From: Larry Magarik <lmagarik@kjmlabor.com>  
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Please review the attached revised draft Report, and kindly reply with your approval so I can submit it to the Court.

Thank you,

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April 15, 2008

**By Hand**

Larry Magarik, Esq.  
Kennedy Jennik & Murray, P.C.  
113 University Place  
New York, New York 10003

Re: Guild Concepts, Ltd. & Victor Ayala

Dear Mr. Magarik:

Pursuant to your letter dated April 3, 2008 and our subsequent discussions, I enclose black-lined changes to your proposed Notice to Participants of the Guild Concepts, Ltd. Employee Savings Plan.

We would appreciate the opportunity to briefly review your final draft of the Notice prior to its submission to the Court. If you have any questions, please feel free to contact me. Thank you for your assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read "Fran Obeid".

Fran Obeid

Enclosure

**KENNEDY, JENNIK & MURRAY, P.C.**

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OMAR A. JOSEPH (MA, D.C.)  
CHRISTOPHER G. GANT (NJ ONLY)

April 3, 2008

**Via Fax 212-337-2112**

Harold W. LeMar, Esq.  
Office of the Regional Solicitor  
U.S. Department of Labor  
201 Varick Street, Room 983  
New York, NY 10014-4811

**Via Fax 212-808-8108**

Fran Obeid, Esq.  
Kostelanetz & Fink, LLP  
7 World Trade Center  
New York, NY 10007

**Re: Chao v. Guild Concepts, Ltd.  
08-CIV-1716 (CLB)**

Dear Counsel:

Per Judge Brieant's Chambers, the parties are directed to submit any comments on the proposed Notice to Participants to me by April 15, 2008. I will then submit your comments, approval or a revised version to the Court. Thank you for your attention.

Sincerely,

LARRY MAGARIK (LM-3748)

cc: **Via Fax 914-390-4085**

Att: Alice Cama, Deputy  
Hon. Charles L. Brieant, United States District Judge  
United States District Court, Southern District of New York  
U.S. Courthouse, 300 Quarropas Street, Room 275  
White Plains, NY 10601